

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EUGENE SAMUEL SANDERS,

Defendant-Appellant.

UNPUBLISHED

May 20, 2008

No. 276890

Wayne Circuit Court

LC No. 06-009069-02

Before: Donofrio, P.J., and Sawyer and Murphy, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions of possession with intent to deliver 50 to 450 grams of cocaine, MCL 333.7401(2)(a)(iii), and possession with intent to deliver 5 to 45 kilograms of marijuana, MCL 333.7401(2)(d)(ii). Defendant was sentenced to concurrent prison terms of 36 months to 20 years for the cocaine conviction and 36 months to 7 years for the marijuana conviction. We affirm but remand for correction of defendant's presentence investigation report. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's brother testified that he called police after finding defendant in his home with a man armed with an AK-47 and learning that defendant owed the man \$1,600. He further testified that he did not observe any drugs in the home, the man was not pointing the weapon at defendant, and that he was allowed to leave after a few minutes. Police officers testified that, when they arrived, defendant was walking out of the house and locking the front door, and he told the officers that no one else was inside. Upon entry, the officers found large quantities of cocaine and marijuana and, in the basement of the home, a loaded AK-47 and a man hiding in a pile of clothes. Defendant testified that he owed the man money and that the man insisted that defendant sell drugs to repay the money, but defendant did not want the drugs in his home and did not want to sell drugs. Defendant testified that he feared that the man would shoot him with the AK-47, which he pointed at defendant. Defendant did not tell police about the man when they came to the house because he was not sure if the man could hear him or if he could shoot defendant through the door.

On appeal, defendant argues that the prosecution presented insufficient evidence that he did not act under duress. This Court reviews sufficiency of the evidence issues de novo in the

light most favorable to the prosecution to determine whether a rational trier of the fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). Questions of credibility are to be resolved by the trier of fact, and this Court will not resolve them anew. *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999). In order to raise the defense of duress, a defendant must present some evidence that the essential elements of duress were present. *People v Lemons*, 454 Mich 234, 246; 562 NW2d 447 (1997). A defendant carries his burden of production for the defense of duress where evidence is presented from which the factfinder could conclude:

“A) The threatening conduct was sufficient to create in the mind of a reasonable person the fear of death or serious bodily harm;

B) The conduct in fact caused such fear of death or serious bodily harm in the mind of the defendant;

C) The fear or duress was operating upon the mind of the defendant at the time of the alleged act; and

D) The defendant committed the act to avoid the threatened harm.”
[*Lemons*, *supra* at 247, quoting *People v Luther*, 394 Mich 619, 623; 232 NW2d 184 (1975).]

Further, “the threatening conduct or act of compulsion must be ‘present, imminent, and impending’” and “the threat ‘must have arisen without the negligence or fault of the person who insists upon it as a defense.’” *Lemons*, *supra* at 247, quoting *People v Merhige*, 212 Mich 601, 610-611; 180 NW 418 (1920). Once a defendant successfully raises the defense of duress, the burden shifts to the prosecution to prove beyond a reasonable doubt that the defendant did not act under duress. *People v Terry*, 224 Mich App 447, 453-454; 569 NW2d 641 (1997).

Although the prosecution did not present rebuttal evidence regarding duress, the prosecution cross-examined defendant and his brother regarding the duress defense and, in that manner, met its burden of proving that defendant did not act under duress. The trial court correctly found that defendant’s brother’s testimony did not establish an imminently threatening situation. The court also determined that defendant’s testimony was simply not credible, and we defer to the trial court’s role as trier of fact to resolve issues of credibility. *Avant*, *supra* at 506. Viewing the evidence in a light most favorable to the prosecution, *Johnson*, *supra* at 723, it cannot be said that the prosecution failed to present sufficient evidence that defendant did not act under duress in possessing the drugs in his home with intent to deliver them.

Defendant also contends that the matter should be remanded for correction of his presentence investigation report. Although the trial court found that the PSIR inaccurately stated that defendant completed only ninth grade, rather than eleventh, and that the PSIR stated that defendant was found guilty by plea, rather than following a bench trial, the trial court failed to order correction of the PSIR as required by MCL 771.14(6). Corrections of this type may be made at any time. MCR 6.435. Therefore, we remand this matter to the trial court for the ministerial task of correcting the presentence investigation report.

Defendant's convictions and sentences are affirmed. We remand for the correction of defendant's presentence investigation report. We do not retain jurisdiction.

/s/ Pat M. Donofrio

/s/ David H. Sawyer

/s/ William B. Murphy